

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Date:
April 02, 2008

RE:

Legend

- Decedent =
- Spouse =
- X =
- Y =
- Date 1 =
- Date 2 =
- Law Firm =
- \$A =
- \$B =
- State =

Dear _____ :

This is in response to your authorized representative's submission dated September 19, 2007, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make a reverse qualified terminable interest property (QTIP) election under § 2652(a)(3) of the Internal Revenue Code and allocate Generation-Skipping Transfer (GST) exemption pursuant to § 2642(g).

On Date 1, Decedent died testate survived by Spouse, children, and grandchildren. The executors of Decedent's estate are X and Y. Decedent's will, dated Date 2, established the GSTT Exempt Trust and the Residuary Trust. The GSTT Exempt Trust provides that if Spouse and one or more of Decedent's descendants survived him, the "GST exemption amount" as provided under § 2631 was to be held in

trust. The Residuary Trust was to hold the residuary estate in a separate trust for the benefit of Spouse.

The executors engaged Law Firm to prepare and timely file Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. On Schedule M, Bequests, etc., to Surviving Spouse, the executors elected QTIP treatment for both the Residuary Trust and the GSTT Exempt Trust in the amount of \$A. On Schedule R, Generation-Skipping Transfer Tax, \$B of Decedent's GST exemption was mistakenly allocated to lifetime transfers that were never made. Accordingly, the allocation was void. See § 26.2632-1(b)(4)(i) of the Generation-Skipping Transfer Tax Regulations. Law Firm did not advise the executors to make the reverse QTIP election or to allocate Decedent's GST exemption to the GSTT Exempt Trust. These errors were discovered by Law Firm in preparation of an accounting of Decedent's estate for State court.

Decedent's estate requests rulings under § 301.9100-03 granting the following:

1. The Estate be granted a sixty day extension of time to make a reverse QTIP election for the GSTT Exempt Trust pursuant to § 2652(a)(3); and
2. The Estate be granted a sixty day extension of time to allocate the Decedent's unused GSTT exemption to the GSTT Exempt Trust pursuant to § 2642(g)(1).

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2056(a) provides that, for purposes of the tax imposed by § 2001, the value of the taxable estate shall, except as limited by § 2056(b), be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property that passes or has passed from the decedent to the surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

Under § 2056(b)(1), no deduction is allowed for an interest passing to the surviving spouse if, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, the interest will terminate or fail.

Under § 2056(b)(7)(A), "qualified terminable interest property" is treated as passing to the surviving spouse for purposes of § 2056(a) and no part of the property is treated as passing to any person other than the surviving spouse. Qualified terminable interest property is defined under § 2056(b)(7)(B)(i) as property: (1) which passes from the decedent to the surviving spouse; (2) in which the surviving spouse has a qualifying income interest for life; and (3) to which an election under § 2056(b)(7)(B)(v) applies. Under § 2044, property subject to a QTIP election for which a deduction is allowed

under § 2056(b)(7), is includible in the surviving spouse's gross estate on that spouse's subsequent death.

Section 2056(b)(7)(B)(ii) provides that the surviving spouse has a qualifying income interest for life if: (I) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property; and (II) no person has a power to appoint any part of the property to any person other than the surviving spouse.

Section 2056(b)(7)(B)(v) provides that an election under § 2056(b)(7) with respect to any property shall be made by the executor on the return of tax imposed by § 2001. Such an election, once made, shall be irrevocable.

Section 2601 imposes a tax on every generation-skipping transfer (GST) made by a transferor to a skip person. A GST is defined under § 2611(a) as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Under § 2631(a) as in effect during the years involved in this case, for purposes of determining the inclusion ratio, every individual is allowed a GST exemption amount (adjusted for inflation under § 2631(c)) that may be allocated by the individual (or his executor) to any property with respect to which the individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, is irrevocable.

Section 2632(a)(1) provides that an individual's GST exemption may be allocated at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such return is required to be filed.

Under § 26.2632-1(d)(1), an allocation of a decedent's available GST exemption by the executor of the decedent's estate is made on Form 706 filed on or before the date prescribed for filing the return by § 6075(a) (including any extensions granted). An allocation of GST exemption with respect to property included in the gross estate of a decedent is effective as of the date of death.

Section 2642(b)(2) provides generally that if property is transferred as a result of the death of the transferor, the value of the property for purposes of determining the inclusion ratio under § 2642(a)(1) shall be the value of the property as finally determined for estate tax purposes.

Section 2642(g)(1)(A) provides, generally, that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for

requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), which was enacted into law on June 7, 2001.

Under § 2652(a)(1) and § 26.2652-1(a)(1), the "transferor" of the property for GST tax purposes is the individual with respect to whom the property was last subject to federal estate or gift tax. However, under section 2652(a)(3), in the case of a trust for which a deduction was allowed under § 2056(b)(7), the decedent's estate may elect to treat all of the property in the trust as if the § 2056(b)(7) election had not been made for purposes of the GST tax (reverse QTIP election). Accordingly, the decedent, and not the surviving spouse, is treated as the transferor of the property for GST tax purposes. Under § 26.2652-2(b), the reverse QTIP election is irrevocable and is not effective unless it is made with respect to all of the property in the trust to which the QTIP election applies. Under § 26.2652-2(b), the reverse QTIP election is made on the return of tax on which the QTIP election is made.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute).

Notice 2001-50, 2001-34 I.R.B. 189, provides, in part, that under § 2642(g)(1)(B), the time for allocating the GST exemption to transfers at death is to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(2) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer has acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts and representations made, we have determined that the standards of §§ 301.9100-1 and 301.9100-3 have been met. Therefore, an extension of time is granted until 60 days from the date of this letter to make a reverse QTIP election

with respect to the GSTT Exempt Trust and to allocate Decedent's unused GST exemption to the GSTT Exempt Trust under § 2642(g)(1).

The reverse QTIP election and allocation of GST exemption should be made on a supplemental Form 706 (United States Estate (and Generation-Skipping Transfer) Tax Return). The supplemental Form 706 should be filed on behalf of Decedent's estate with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

William P. O'Shea
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy for § 6110 purposes
Copy of this letter

cc: